

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA * Case No. 17-CR-00281(ERK)
 *
 * Brooklyn, New York
 * January 19, 2018
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 *
CARLOS RICHARD MARTINEZ, *
 *
 * Defendant.
 *
* * * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: RICHARD P. DONOGHUE
 UNITED STATES ATTORNEY

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1 (Proceedings commenced at 11:58 a.m.)

2 THE CLERK: Counsel, the last jury note, the first one
3 this morning, has been marked Court Exhibit 28, requested
4 Government's Exhibits 208, 216, 213, 232, 240-A, as in Adam.

5 Counsel signed the letter and authorized me to submit
6 that to the jury. It's gone in.

7 (Court Exhibit No. 28 marked for identification.)

8 The Government's email from this morning has been
9 marked Court Exhibit 29, proposing a new verdict sheet, which
10 has been marked 29A.

11 Counsel, you've agreed that 29A can go into the jury
12 as is?

13 MS. ARGENTIERI: Yes.

14 (Court Exhibit Nos. 29 and 29A marked for identification.)

15 MR. RICCO: And I've -- yes, and I've discussed this
16 with Mr. Martinez. This is precisely what we were requesting
17 the judge to do last night.

18 THE CLERK: And you consent to this, Mr. Martinez.

19 MR. RICCO: And he consents to it.

20 THE DEFENDANT: Yes.

21 THE CLERK: Thank you very much, counsel.

22 MR. RICCO: Thank you.

23 (Recess from 12:01 p.m. until 12:12 p.m.)

24 THE CLERK: Judge, I went back into the jury room and
25 just advised the jurors there was typo-- took it back. They

1 laughed and they said they hadn't looked at it yet.

2 THE COURT: We're talking about the verdict sheet?

3 THE CLERK: 29A, Judge.

4 THE COURT: First of all, it's one thing to
5 communicate with me with my email when it's evenings and
6 weekends. I'm here. And if you want to make an application,
7 don't do it by email.

8 There was some confusion between communication
9 between my law clerk and Paula. I actually wanted to hear what
10 Mr. Ricco's position was before I decided whether to send it
11 in.

12 It didn't necessarily mean if he objected I wouldn't
13 have sent it in. He's consented, but I'm still not sure I
14 think that's the appropriate way to deal with this.

15 I think that I indicated yesterday my reluctance to
16 disrupt the jury's deliberations by sending in a new verdict
17 sheet and I still feel the same way.

18 MS. ARGENTIERI: The concern the government has,
19 Judge, is that the jurors -- we've left it to them to write
20 something in and it's unclear what they have to write in.

21 And I'm not saying --

22 THE COURT: It's unclear what they have to write in?

23 MS. ARGENTIERI: I think it is unclear, Judge, and I
24 think that jurors -- and I spoke about this with a number of
25 people in my office last night, including the front office and

1 David James, and they have raised inferences where having
2 something like this they thought could create a problem,
3 assuming the defendant is convicted and -- because they might
4 not choose exactly the same language, or exactly the right
5 phrase, or they might just write one word.

6 And they thought it would just be cleaner if the
7 court would like to have a special interrogatory to have the
8 language in the statute in there so they could just check it to
9 make it simpler.

10 We are not trying to over complicate anything any
11 more than I know you believe it already is. It just seemed
12 cleaner. Mr. Ricco did not object --

13 MR. RICCO: Well, let's leave Mr. Ricco out of the
14 argument.

15 MS. ARGENTIERI: I don't know why --

16 MR. RICCO: I'm just asking you to leave me out of
17 the argument.

18 MS. ARGENTIERI: So at the time I believed -- because
19 I had spoken to Mr. Ricco that -- and he said he was fine, that
20 he had no objection.

21 And so, you know -- and now the truth of it is that
22 the -- I can't think of the word --

23 MS. SHIHATA: (Indiscernible)

24 MS. ARGENTIERI: No. They -- their deliberations, we
25 have done in and taken out the verdict sheet that we're using

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1 and we've given them this one, so it seems to me that this
2 would just be a way to make --

3 THE COURT: We haven't taken out the verdict sheet
4 that they're using.

5 THE CLERK: When I mistakenly understood that the new
6 verdict sheet should go in, I took out the old one because they
7 had not written anything on it. It was a clean verdict sheet.
8 And I stated that for the record earlier with counsel.

9 MR. RICCO: And, Judge, my request was if there were
10 any writing on the sheet at all, any markings at all, that it
11 would stay and you would be notified. That's how that --

12 So, Judge, I guess the --

13 THE COURT: Do we have the transcript from yesterday?

14 THE CLERK: There was an email glitch and it hasn't
15 been received. I can get it.

16 (Pause.)

17 THE CLERK: I just emailed the transcription service
18 to see if they could email it to me right away.

19 THE COURT: And whose fault was that, by the way,
20 that we didn't get it?

21 THE CLERK: ESR was notified this morning that they
22 didn't get a copy and the transcription service said it must
23 have been a glitch with her email that it was sent out. I
24 didn't remember seeing mine and I asked counsel and they said
25 they hadn't seen it. So it must have been a problem on the

1 sender's account.

2 THE COURT: Look. I think we made it pretty clear to
3 the jury what they should do. I don't want you to think that
4 I'm acting irrationally. What troubles me about this verdict
5 sheet is it already indicates an additional multiplicity of
6 counts in an indictment that in my view was already
7 unnecessarily prolix.

8 And by putting this in, you know, it sort of
9 indicates -- there's a suggestion here that there's a
10 multiplicity of counts when we're really dealing with, in this
11 instance, one count -- any one count with respect to each. So
12 that's my basic view.

13 And the other half of it is I don't like disrupting a
14 jury's deliberations in mid stream. I'm not suggesting that if
15 we -- you know, if this hadn't arisen at the outset, I might
16 not have done this, but I have these two concerns right now.

17 MS. ARGENTIERI: Okay.

18 THE COURT: And I don't -- you know, the jury's been
19 deliberating -- I think I gave them the case at 4 o'clock --
20 today is Friday. On Wednesday.

21 MS. ARGENTIERI: Okay.

22 THE COURT: They deliberated all day yesterday. They
23 deliberated almost a -- well, not a half a day. A couple of
24 hours this morning and I just am reluctant to disrupt it with a
25 verdict sheet that, you know, suggests that there are even more

1 counts in the indictment than there already are.

2 MS. ARGENTIERI: Okay, Judge.

3 THE CLERK: Do you want to hear the play back from
4 when you spoke to the jury yesterday?

5 THE COURT: Yes, we could hear the play back.

6 MS. ARGENTIERI: Judge, we weren't -- I don't know
7 that we -- we weren't saying that what you said was unclear.
8 We were just talking about documenting what they find.

9 And so I just want to save you the -- honestly, we
10 understand what you're saying and --

11 THE COURT: And there is a safety valve here.

12 MS. ARGENTIERI: Okay.

13 THE COURT: The safety valve is if it's unclear when
14 they deliver the verdict, they could send them back and ask for
15 clarity. That's the final safety valve here.

16 MS. ARGENTIERI: Okay.

17 THE COURT: But I think we made it clear. I thought I
18 made it clear. I mean, I know you reminded me to tell them
19 whichever one they picked had to be -- they had to be unanimous
20 and I did that.

21 MS. ARGENTIERI: Okay. I think we're good then,
22 Judge.

23 MR. RICCO: And Judge, I just wanted to make my views
24 on this clear.

25 I certainly -- my concerns with -- the court's is,

1 with respect to the jury getting the impression that we're sort
2 of all over the place. So I'm concerned about that.

3 This was a suggestion that was made last night. The
4 government posed it for whatever reason. My concerns was if
5 there was any markings on the verdict form, it should -- you
6 know, stays and --

7 THE COURT: Well, unless we -- let me put it this
8 way. I don't know what the jury was doing. Ever since I
9 predicted that Hillary Clinton would be celebrating her first
10 anniversary as president of the United States, I've stopped
11 making predictions about anything.

12 So I don't know what they're doing, unless this jury
13 is hung. I don't know what verdict sheet -- was there only one
14 verdict sheet sent it?

15 THE CLERK: Right now they do not have any verdict
16 sheet.

17 THE COURT: I don't -- I don't know -- I don't know
18 what they're doing.

19 MR. RICCO: You know, Judge, this is --

20 THE COURT: It may -- and I already know too much
21 because of the way this has been done.

22 MR. RICCO: Right. And my sense --

23 THE COURT: More than I should know. I don't think
24 that anything terrible has happened. The bad thing about my
25 knowing what the jury is doing is if they're split a particular

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1 way and I -- that prevents me from giving an *Allen* charge.

2 MR. RICCO: But, Judge, in thinking this through, I
3 mean, I -- I sort of rely on the wisdom and experience of the
4 court in these matters. I know that I --

5 THE COURT: (Indiscernible) wisdom. I had this one
6 case where -- I occasionally do things out of the box. There's
7 one case in which I told the government they could amend the
8 indictment in the middle of trial.

9 MR. RICCO: The court was called *United States vs.*
10 *Caldwell*.

11 THE COURT: Well, maybe it was that too, but it was
12 another case. It was a capital case. And it wasn't a
13 significant change --

14 MR. RICCO: No, it wasn't --

15 THE COURT: It wasn't a significant change, but the
16 government agreed that it was okay. They consulted with their
17 people and the Court of Appeals disagreed.

18 MS. ARGENTIERI: I don't know that we should read it
19 as anything that there's nothing on the verdict form as of yet.

20 THE COURT: Well, I don't know. I'm not -- I
21 qualified it by saying that I could be wrong. There could be
22 one juror who's keeping track of what's going on, or two jurors
23 keeping track of what's going on on a separate pad and they may
24 want to fill it in afterwards.

25 MS. ARGENTIERI: Right. And they're continuing to

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1 ask for evidence, which they asked for this morning already,
2 and they're asking for more evidence now, which we'll go back -
3 - so perhaps we should just send back the old verdict form when
4 we send back these exhibits and we can resolve it that way.

5 THE COURT: Okay.

6 MR. RICCO: Judge, I was okay with Your Honor's
7 instructions last night. I'm also -- was okay with the -- if we
8 would have had this form last night, I would have been fine
9 with it.

10 But I'm also very much interested in Your Honor's
11 perspective about how jurors do this one way or the other.

12 THE COURT: I don't -- the question is -- the real
13 problem is I don't know. I just don't like the idea of, you
14 know, sending in a new verdict sheet in the middle of -- after
15 a day and a half of deliberations and a verdict sheet that only
16 -- my view was that this should have never been a 20 count
17 indictment and this makes it a what -- it makes it appear as if
18 it's 25 counts.

19 MS. ARGENTIERI: Understood.

20 THE COURT: Okay.

21 MS. ARGENTIERI: Okay. Thank you, Judge.

22 THE COURT: Just we've just received another note,
23 which I've marked Court Exhibit 30, requesting Larihelys'
24 testimony, Lopez testimony, Rodriguez testimony.

25 Larihelys' will be marked as Court Exhibit 30A,

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1 Rodriguez as 30B and they already have Lopez.

2 (Court Exhibit Nos. 30A and 30B marked for
3 identification.)

4 I'm going to direct them to the number of that court
5 exhibit once I --

6 THE COURT: Do you -- have you gone through these
7 transcripts?

8 THE CLERK: Yes, I have.

9 THE COURT: They're correct?

10 THE CLERK: Yes, Judge.

11 THE COURT: Okay. So there's no objection to sending
12 them in.

13 (Pause.)

14 THE CLERK: It's on the record.

15 MS. ARGENTIERI: Right.

16 THE CLERK: So I've marked Lariheyls as 30A,
17 Rodriguez as 30B and with your permission I will advise them
18 that Lopez is 22A.

19 MS. ARGENTIERI: Perfect.

20 MR. RICCO: Yes, you have my permission.

21 MS. ARGENTIERI: All right. Thank you. Thank you,
22 both.

23 THE CLERK: Judge, which verdict sheet are they
24 getting back now?

25 THE COURT: The original.

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1 THE CLERK: The original. So I am resubmitting Court
2 Exhibit 12.

3 MS. ARGENTIERI: Perfect.

4 THE CLERK: Thank you.

5 MS. ARGENTIERI: Thank you, Paula. Thank you, Judge.

6 (Recess from 12:30 p.m. until 3:09 p.m.)

7 THE CLERK: Please be seated.

8 Judge, I have a note the jury's reached a verdict.

9 It's been marked Court Exhibit No. 31 and signed by all jurors.

10 (Court Exhibit No. 31 marked for identification.)

11 THE COURT: Okay. Have you seen it?

12 THE CLERK: I told counsel I'll make copies

13 afterwards, Judge.

14 (Jury enters)

15 THE VERDICT

16 THE CLERK: All rise.

17 Please be seated.

18 THE COURT: Okay. Juror no. 2, we have your note

19 that the jury has reached a verdict.

20 I'll go through it with you. I'll ask the question

21 and you'll give me the jury's answer.

22 On Count 1, deprivation of rights, how do you find

23 the defendant; guilty or not guilty?

24 THE JURY FOREPERSON: Guilty.

25 THE COURT: On Count 5, how do you find the defendant

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1 with respect to deprivation of rights; guilty or guilty?

2 THE JURY FOREPERSON: Guilty.

3 THE COURT: On Count 9, how do you find the defendant
4 with respect to deprivation of rights; guilty or not guilty?

5 THE JURY FOREPERSON: On Count 13, with respect to
6 deprivation of rights, how do you find the defendant; guilty or
7 not guilty?

8 THE JURY FOREPERSON: Guilty.

9 THE COURT: On Count 17, deprivation of rights, how
10 do you find the defendant; guilty or not guilty?

11 THE JURY FOREPERSON: Guilty.

12 THE COURT: On Count 2, aggravated sexual abuse, how
13 do you find the defendant; guilty or not guilty?

14 THE JURY FOREPERSON: Guilty.

15 THE COURT: On Count 6, aggravated sexual abuse, how
16 do you find the defendant; guilty or not guilty?

17 THE JURY FOREPERSON: Guilty.

18 THE COURT: On Count 10, aggravated sexual abuse, how
19 do you find the defendant; guilty or not guilty?

20 THE JURY FOREPERSON: Guilty.

21 THE COURT: On Count 14, aggravated sexual abuse, how
22 do you find he defendant; guilty or not guilty?

23 THE JURY FOREPERSON: On Count 18, aggravated sexual
24 abuse, how do you find the defendant, guilty or not guilty?

25 THE COURT: On Count 3, which is sexual abuse, how do

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1 you find the defendant; guilty or not guilty?

2 THE JURY FOREPERSON: Guilty.

3 THE COURT: And if you recall, that was one of the
4 counts where you were going to let me know which, fear or
5 threat, or both.

6 THE JURY FOREPERSON: Fear.

7 THE COURT: On Count 7 of the indictment, sexual
8 abuse, December 13th, 2015, how do find the defendant; guilty
9 or not guilty?

10 THE JURY FOREPERSON: Guilty.

11 THE COURT: And that's another one where you were
12 going to let me know whether it was fear or threats?

13 THE JURY FOREPERSON: Fear.

14 THE COURT: Count 11, sexual abuse, how do you find
15 the defendant; guilty or not guilty?

16 THE JURY FOREPERSON: Guilty.

17 THE COURT: And, again, fear or threats?

18 THE JURY FOREPERSON: Fear.

19 THE COURT: Count 15, how do you find the defendant
20 with respect to count -- with respect to sexual abuse; guilty
21 or not guilty?

22 THE JURY FOREPERSON: Guilty.

23 THE COURT: Of fear or threats?

24 THE JURY FOREPERSON: Fear.

25 THE COURT: Count 19, sexual abuse, how do you find

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1 the defendant; guilty or not guilty?

2 THE JURY FOREPERSON: Guilty.

3 THE COURT: Of fear or threats?

4 THE JURY FOREPERSON: Fear.

5 THE COURT: On Count 4 of the indictment, sexual
6 abuse of a ward, how do you find the defendant; guilty or not
7 guilty?

8 THE JURY FOREPERSON: Guilty.

9 THE COURT: On Count 8 of the indictment, sexual
10 abuse of a ward, how do find the defendant; guilty or not
11 guilty?

12 THE JURY FOREPERSON: Guilty.

13 THE COURT: On Count 12 of the indictment, sexual
14 abuse of a ward, how do you find the defendant; guilty or not
15 guilty?

16 THE JURY FOREPERSON: Guilty.

17 THE COURT: On Count 16 of the indictment, sexual
18 abuse of a ward, how do you find the defendant; guilty or not
19 guilty?

20 THE JURY FOREPERSON: Guilty.

21 THE COURT: And on Count 20 of the indictment, how do
22 you find the defendant -- Count 20, sexual abuse of a ward, how
23 do you find the defendant; guilty or not guilty?

24 THE JURY FOREPERSON: Guilty.

25 THE COURT: All right, ladies and gentlemen. You've

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1 heard your foreperson announce your verdict, finding the
2 defendant guilty of all counts of the indictment.

3 Juror no. 1, is that your verdict?

4 JUROR NO. 1: Yes.

5 THE COURT: Juror no. 2, is that your verdict?

6 JUROR NO. 2: Yes.

7 THE COURT: Juror no. 3, is that your verdict?

8 JUROR NO. 3: Yes.

9 THE COURT: Juror no. 4, is that your verdict?

10 JUROR NO. 4: Yes.

11 THE COURT: Juror no. 5, is that your verdict?

12 JUROR NO. 5: Yes.

13 THE COURT: Juror no. 6, is that your verdict?

14 JUROR NO. 6: Yes.

15 THE COURT: Juror no. 7, is that your verdict?

16 JUROR NO. 7: Yes.

17 THE COURT: Juror no. 8, is that your verdict?

18 JUROR NO. 8: Yes.

19 THE COURT: Juror no. 9, is that your verdict?

20 JUROR NO. 9: Yes, Your Honor.

21 THE COURT: Juror no. 10, is that your verdict?

22 JUROR NO. 10: Yes.

23 THE COURT: Juror no. 11, is that your verdict?

24 JUROR NO. 11: Yes, Your Honor.

25 THE COURT: Juror no. 12, is that your verdict?

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1 JUROR NO. 12: Yes.

2 THE COURT: Is there any reason why the jury should
3 not be excused?

4 MR. RICCO: None.

5 MS. ARGENTIERI: No, Judge.

6 THE COURT: Okay. Ladies and gentlemen -- as soon as
7 I get the microphone -- I want to thank you for your -- for the
8 time and careful attention that you've paid to this case.
9 Almost everybody was listening carefully and taking notes.
10 It's unusual the number of jurors that were taking notes in
11 this case, and the time that you took to deliberate on this
12 verdict I think also reflects the time and careful attention
13 you gave to this case.

14 I know most people who are selected for jury or when
15 they're being voir dired for jury selection they sort of don't
16 want to serve on a jury and they give answers to try and get
17 off.

18 But I think you'll agree with me that service on a
19 jury is an interesting -- not only an interesting experience,
20 but gives you a picture into the operation of the criminal
21 justice process that you would not otherwise have.

22 So I thank you again and have a nice weekend.

23 THE CLERK: All rise.

24 (Jury exits.)

25 THE CLERK: You may be seated.

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1 MR. RICCO: Yes, Your Honor. I want to renew the Rule
2 29 motions I did propose of all evidence. I adopted the
3 arguments that were made at the time.

4 THE COURT: I forgive you the fact that you didn't
5 do it at the time, but I don't think it makes any difference
6 because there was no great difference between the evidence
7 after the government's case and after your case that would have
8 affected a decision on a Rule 29 motion.

9 I'll give you until the date of sentencing to make
10 any post-trial motions that normally have to be made within
11 seven days of the trial.

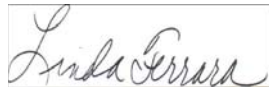
12 MR. RICCO: Thank you, Judge.

13 MS. SHIHATA: Thank you, Judge.

14 MR. RICCO: Thank you very much, Your Honor.

15 (Proceedings concluded at 3:18 p.m.)
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1 I, LINDA FERRARA, Certified Electronic Transcriber,
2 certify that the foregoing is a correct transcript from the
3 official electronic sound recording of the proceedings in the
4 above-entitled matter.

5
6 

7 January 19, 2018

8 Linda Ferrara, CET
9
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11 I, CHRISTINE FIORE, Certified Electronic Court Reporter
12 and Transcriber, certify that the foregoing is a correct
13 transcript from the official electronic sound recording of the
14 proceedings in the above-entitled matter.

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17 January 19, 2018

18 Christine Fiore, CERT-410
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